

§ 68.25 Subpoenas.

(a) An Administrative Law Judge, upon his or her own initiative or upon request of an individual or entity before a complaint is filed or by a party once a complaint has been filed, may issue subpoenas as authorized by statute, either prior to or subsequent to the filing of a complaint. Such subpoena may require attendance and testimony of witnesses and production of things including, but not limited to, papers, books, documents, records, correspondence, or tangible things in their possession and under their control and access to such things for the purposes of examination and copying. A subpoena may be served by overnight courier service or overnight mail, certified mail, or by any person who is not less than 18 years of age. A witness, other than a witness subpoenaed on behalf of the Federal Government, may not be required to attend a deposition or hearing unless the mileage and witness fee applicable to witnesses in courts of the United States for each date of attendance is paid in advance of the date of the proceeding. Mileage and witness fees need not be paid to a witness at the time of service of the subpoena if the witness is subpoenaed by the Federal Government.

(b) The subpoena shall identify the person or things subpoenaed, the person to whom it is returnable and the place, date, and time at which it is returnable; or the subpoena shall identify the nature of the evidence to be examined and copied, and the date and time when access is requested. Where a non-party is subpoenaed, the requestor of the subpoena must give notice to all parties, or if no complaint has been filed, then notice shall be given to individuals or entities who have been charged with an unfair immigration-related employment practice under section 274B of the INA, the individual initiating the alleged unfair immigration-related employment practice, and the Office of Special Counsel. For purposes of this subsection, the receipt of the subpoena or a copy of the subpoena shall serve as the notice.

(c) Any person served with a subpoena issued by an Administrative Law Judge who intends not to comply with it shall, within ten (10) days after the

date of service of the subpoena upon such person or within such other time the Administrative Law Judge deems appropriate, petition the Administrative Law Judge to revoke or modify the subpoena. A copy of the petition shall be served on all parties. If a complaint has not been filed in the matter, a copy of the petition shall be served on the individual or entity that requested the subpoena. The petition shall separately identify each portion of the subpoena with which the petitioner does not intend to comply and shall state, with respect to each such portion, the grounds upon which the petitioner relies. A copy of the subpoena shall be attached to the petition. Within eight (8) days after receipt of the petition, the individual or entity that applied for the subpoena may respond to such petition, and the Administrative Law Judge shall then make a final determination upon the petition. The Administrative Law Judge shall cause a copy of the final determination of the petition to be served upon all parties, or, if a complaint has not been filed, upon the individuals or entities requesting and responding to the subpoena.

(d) A party shall have standing to challenge a subpoena issued to a non-party if the party can claim a personal right or privilege in the discovery sought.

(e) Failure to comply. Upon the failure of any person to comply with an order to testify or a subpoena issued under this section, the Administrative Law Judge may, where authorized by law, apply through appropriate counsel to the appropriate district court of the United States for an order requiring compliance with the order or subpoena.

[Order No. 1534-91, 56 FR 50055, Oct. 3, 1991, as amended by Order No. 1635-92, 57 FR 57672, Dec. 7, 1992]

§ 68.26 Designation of Administrative Law Judge.

Hearings shall be held before an Administrative Law Judge appointed under 5 U.S.C. 3105 and assigned to the Department of Justice. The presiding judge in any case shall be designated by the Chief Administrative Hearing Officer. The Chief Administrative Hearing Officer may reassign a case